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LIFE, LIBERTY, AND PROPERTY. — The modern tendency to define very widely the terms "liberty" and "property" in the clause, "no person shall be deprived of life, liberty, or property without due process of law," has received fresh illustration in a recent decision of the Supreme Court of Illinois (*Braceville Coal Co.* v. *People*, 26 Chicago Legal News, 76). A statute which enacted that corporations of certain kinds should pay the wages to their employees on fixed days was held a deprivation both of liberty and of property, and so unconstitutional. "Liberty" was said to embrace "the right of every man to be free in the use of his powers and faculties, and to adopt and pursue such vocation or calling as he may choose." The privilege of contracting was said to be a liberty and a property right. This sort of interpretation seems to be growing. It is the established doctrine in New York. The courts of Massachusetts and of other States have used language to the same effect. But the tendency is almost wholly of recent origin. It is to be noticed also that this loose doctrine has never been sanctioned by any decision of the Supreme Court of the United States, though it may have sprung from the individual expressions of Mr. Justice Bradley in his dissenting opinion in the Slaughter-House cases. But the actual decision of that case, so far as the point was touched upon, was certainly contrary. It is rather curious that the case should have been cited by the Supreme Court of Illinois as authority for their view.

The manner of approaching these questions in modern cases is unfortunate. The duty of the court ought to be plain. It is to determine the exact meaning the framers of the Constitution intended these words to have, and to decide this as a question of constitutional law. It is surely a mistaken course to be guided in such a matter by economic theories of property, or by some new political notion of liberty. These are legal questions. Now, in the absence of special conditions, the phrase ought to have the same interpretation given it in every State; for all the newer States have copied it from our older constitutions, and these

in turn found it ready made in the English common law. Then the reasoning of the court ought to lie within clear, well-defined limits. The courts should try to find out the meaning this clause had when used in the English common law before its adoption in our constitutions. This presumptively is the meaning it has in any particular constitution. Now, it is believed that such an investigation will show that the explanation of the term "liberty" given in the fourth volume of this REVIEW[1] is the correct one. It was there said that "liberty" had a plain definite significance, — "that no freeman should be taken or imprisoned," — and nothing more. It is believed that the meaning of "property" is equally simple. In spite of the assertion that more is protected than the thing which is the subject of physical possession, it is improbable that such is the case. Probably property meant what most people not lawyers would say to-day it means; namely, chattels and interests in land either corporeal or incorporeal. No man was ever to be imprisoned, and no man was to have his horses or lands taken from him, except by due process of law. From this, which it is submitted is the original meaning, we have developed the idea that a law which fixes certain days on which a corporation must pay wages deprives it of its liberty and of its property.

Apart from the unsoundness of the position, the definition is so vague as to be useless as a practical working guide. This becomes apparent by reading the cases where such views are upheld. Nearly always the court attempts to fortify its position by arguments as to wisdom or expediency of the questioned legislation, — an assumption of legislative functions which can result in nothing but harm.

CONTRACTS — ACCEPTANCE OF OFFER. — The courts in England and, with the exception of Massachusetts, in the United States hold that a contract made by mail is complete and binding from the moment that the letter of acceptance is put in the post. It is for merchants rather than for lawyers to speak to the commercial expediency of this rule; but so far courts and law-writers have defended it on principle, and have therefore necessarily treated the Post Office as acting throughout the transaction for the original proposer. Mr. Justice Holmes in his Common Law (p. 306) says that "The offeree when he drops the letter containing the counter-promise into the letter-box does an overt act which by general understanding renounces control over the letter and puts it into a third hand for the benefit of the offerer, with liberty to the latter at any moment thereafter to take it." Mr. L. C. Innes, late judge of the High Court, Madras, says in a very careful and able article on the subject in the Law Quarterly Review, ix. 316, that "the offerer extends his personality through the post as his agent for the reception of the acceptance or refusal of the offer." And these may safely be accepted as examples of that view. But in the United States there is a serious difficulty, perhaps not generally understood, in accepting the premises of these arguments: the sender of a letter does not "renounce control" over it; the postal authorities do not act as the offerer's agent to receive the return message. For by Secs. 487, 488, and 489 of "Postal Laws and Regulations, 1893," it appears that the writer or sender may apply for a letter in the mails, and when satisfactory proof of identity has been furnished, may

[1] 4 Harvard Law Review, 365.